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JURISDICTIONAL STATEMENT

Relator Hubbell Power Systems, Inc. a/k/a A.B. Chance Company (“Hubbell”) filed a Petition for Writ of Prohibition or, Alternatively, for Writ of Mandamus in the Missouri Court of Appeals for the Western District, which was denied September 16, 2005, although the Court did not cite a basis for its opinion. Hubbell subsequently filed an original proceeding in prohibition requesting this Court to enter its Writ of Prohibition prohibiting respondent, the Honorable Gene Hamilton, from enforcing his July 28, 2005 order denying relator’s motion to dismiss and further prohibiting respondent from taking any further action in the underlying case with respect to the wrongful death claims of David W. Saddoris, Sr., and Flow Eva Saddoris, except to dismiss those claims for lack of standing. Relator alternatively requested that this Court enter its Writ of Mandamus directing respondent to vacate his July 28, 2005 order denying relator’s motion to dismiss, and further ordering respondent to dismiss, for lack of standing, the wrongful death claims that plaintiffs David W. Saddoris and Flow Eva Saddoris have alleged against relator. This Court entered its Preliminary Writ of Prohibition on November 1, 2005.

This Court has jurisdiction of this matter pursuant to Article V, Section 4, Constitution of the State of Missouri, as well as Missouri Supreme Court Rules 84.22 through 84.26 and 97 and Chapter 530, Missouri Revised Statutes.

STATEMENT OF FACTS

Plaintiffs Terri Saddoris, David W. Saddoris, Sr. and Flow Eva Saddoris have filed a wrongful death action against relator Hubbell in the Circuit Court of Boone County, Missouri, seeking to recover for the death of David A. Saddoris. *See* relator's Appendix at A2. The decedent, who resided in Georgia, was fatally injured in Georgia while using a hoist manufactured by Hubbell to lift cellular communication antennas. A2-A4.

The plaintiffs brought their claims under Missouri's wrongful death statute, Missouri Revised Statutes §537.080, *et seq.* A3. Missouri's only connection to this matter is that the decedent's parents live here and Hubbell, a Delaware corporation, has a place of business here. A3 and A17. The decedent's accident occurred in Georgia, at his place of employment in Georgia, while working on a cell tower in Georgia. A15. The decedent resided in Georgia with his wife, plaintiff Terri Saddoris, herself a Georgia resident, prior to and at the time of his death. A14-A15. If any relationship exists between the parties, that relationship is centered in Georgia, where the decedent was using the hoist at the time of his accident. A15. Georgia is the situs of the incident giving rise to decedent's fatal injuries and the place of his death. A15. Missouri courts have consistently held that, absent agreement by the parties to the contrary, the wrongful death statute of the state in which the fatal injury occurred applies.

Georgia's wrongful death statute, Ga. Code Ann. § 51-4-2, gives decedent's wife Terri Saddoris the exclusive right to pursue a wrongful death claim. A53. On April 18, 2005, Hubbell therefore moved to dismiss the claims against it by David W. Saddoris, Sr.

and Flow Eva Saddoris on the grounds that they lack standing to sue. A10-A16. On July 28, 2005, respondent Judge Gene Hamilton denied Hubbell's motion to dismiss, without explaining the basis for his decision. A1. On August 22, 2005, relator filed a Petition for Writ of Prohibition or, alternatively, for a Writ of Mandamus in the Missouri Court of Appeals, asking that court to review the circuit court's denial of their motion to dismiss and to direct the circuit court to grant the motion. A22. On September 16, 2005, the Court of Appeals denied relator's Petition. A22. Hubbell now seeks a Writ of Prohibition or, alternatively, for a Writ of Mandamus from this Court. A23-A37. A Preliminary Writ of Prohibition was entered by this Court on November 1, 2005. A46.

POINTS RELIED ON

- I. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS JULY 28, 2005 ORDER DENYING RELATOR'S MOTION TO DISMISS AND FURTHER PROHIBITING RESPONDENT FROM TAKING ANY FURTHER ACTION IN THE UNDERLYING CASE WITH RESPECT TO THE WRONGFUL DEATH CLAIMS OF DAVID W. SADDORIS, SR. AND FLOW EVA SADDORIS, EXCEPT TO DISMISS THOSE CLAIMS FOR LACK OF STANDING, BECAUSE RESPONDENT ERRONEOUSLY APPLIED MISSOURI LAW, IN THAT UNDER MISSOURI'S CHOICE OF LAW ANALYSIS GEORGIA HAS THE MOST SIGNIFICANT RELATIONSHIP TO THIS MATTER AND THUS, GEORGIA'S WRONGFUL DEATH STATUTE APPLIES.**

Snead by Snead v. Cordes by Golding, 811 S.W.2d 391 (Mo.App. W.D. 1991)

Thompson v. Crawford, 833 S.W. 2d 868 (Mo. banc 1992)

Martinez v. Missouri Pac. R. Co., 327 S.W.2d 855 (Mo. banc 1959)

State ex rel. Broglin v. Mangle, 510 S.W.2d 699 (Mo. banc 1974)

Restatement (Second) of Conflict of Laws § 145

II. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS JULY 28, 2005 ORDER DENYING RELATOR'S MOTION TO DISMISS AND FURTHER PROHIBITING RESPONDENT FROM TAKING ANY FURTHER ACTION IN THE UNDERLYING CASE WITH RESPECT TO THE WRONGFUL DEATH CLAIMS OF DAVID W. SADDORIS, SR. AND FLOW EVA SADDORIS, EXCEPT TO DISMISS THOSE CLAIMS FOR LACK OF STANDING, BECAUSE AS A MATTER OF LAW RESPONDENT HAS NO JURISDICTION OVER THE CLAIMS OF THESE PLAINTIFFS, IN THAT GA. CODE ANN. § 51-4-2 GIVES DECEDENT'S WIFE, TERRI SADDORIS, THE EXCLUSIVE RIGHT TO PURSUE A WRONGFUL DEATH CLAIM.

Tolbert v. Maner, 271 Ga. 207, 518 S.E.2d 423 (1999)

Farmer v. Kinder, 89 S.W.3d 447 (Mo. banc 2002)

Nelms v. Bright, 294 S.W.2d 483 (Mo. banc 1957)

Ga. Code Ann. § 51-4-2

ARGUMENT

- I. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS JULY 28, 2005 ORDER DENYING RELATOR'S MOTION TO DISMISS AND FURTHER PROHIBITING RESPONDENT FROM TAKING ANY FURTHER ACTION IN THE UNDERLYING CASE WITH RESPECT TO THE WRONGFUL DEATH CLAIMS OF DAVID W. SADDORIS, SR. AND FLOW EVA SADDORIS, EXCEPT TO DISMISS THOSE CLAIMS FOR LACK OF STANDING, BECAUSE RESPONDENT ERRONEOUSLY APPLIED MISSOURI LAW, IN THAT UNDER MISSOURI'S CHOICE OF LAW ANALYSIS GEORGIA HAS THE MOST SIGNIFICANT RELATIONSHIP TO THIS MATTER AND THUS, GEORGIA'S WRONGFUL DEATH STATUTE APPLIES.**

Judge Hamilton's decision to apply Missouri law to the underlying action is at odds with every Missouri case applying choice of law principles to wrongful death actions. Georgia law applies to this action, and requires that the claims of two of the plaintiffs, David W. Saddoris and Flow Eva Saddoris, be dismissed for lack of standing. As a matter of law, Judge Hamilton has no jurisdiction over the claims of these plaintiffs. A writ is necessary to prevent Judge Hamilton from acting in excess of his jurisdiction.

A. Standard of Review

Because choice of law is the primary issue before the court, we must first consider choice of law principles. A forum state will always apply forum procedure. *Reis v.*

Peabody Coal Co., 997 S.W.2d 49, 58 (Mo.App. E.D. 1999). Thus, Missouri procedural law applies to the issues raised on appeal. The standard of review is a procedural issue, and therefore Missouri law governs the standard of review for the issues raised on appeal. *See Id.* at 59.

When reviewing the trial court's grant or denial of a motion to dismiss, an appellate court will reverse the trial court's decision if it erroneously declares the law or applies the law, or is not supported by substantial evidence, or is against the weight of the evidence. *See Morris v. Brown*, 941 S.W.2d 835, 839 (Mo.App. W.D. 1997); *see also Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976). In this case, the trial court chose to apply Missouri's wrongful death statute rather than that of Georgia, although Georgia has the most significant relationship to the incident giving rise to the lawsuit. In determining whether the trial court erroneously declared or applied the law, the Court's review is *de novo*. *Lakin v. Gen. Am. Mut. Holding Co.*, 55 S.W.3d 499, 503 (Mo.App. 2001).

A "writ of prohibition is proper . . . '(1) to prevent the usurpation of judicial power when the trial court lacks jurisdiction; (2) to remedy [an] excess of jurisdiction or an abuse of discretion where the lower court lacks the power to act as intended; or (3) where a party may suffer irreparable harm if relief is not made available in response to the trial court's order.'" *State ex rel. School District of Kansas City v. Williamson*, 141 S.W.3d 418, 423 (Mo.App. 2004), *quoting State ex rel. Proctor v. Bryson*, 100 S.W.3d 775, 776 (Mo. banc 2003). Prohibition is appropriate "when there is an important question of law decided erroneously that would otherwise escape review by this Court, and the aggrieved

party may suffer considerable hardship and expenses as a consequence of the erroneous decision.” *State ex rel. Chassaing v. Mummert*, 887 S.W.2d 573, 577 (Mo. banc 1994). A writ should issue “if it will prevent unnecessary, inconvenient and expensive litigation.” *State ex rel. Springfield Underground, Inc. v. Sweeney*, 102 S.W.3d 7, 8-9 (Mo. banc 2003).

Plaintiffs David W. Saddoris, Sr., and Flow Eva Saddoris lack standing to bring their wrongful death claims against relator Hubbell. This Court should issue a writ of prohibition to preserve constitutional standing principles, to forestall further action by the circuit court that exceeds its jurisdiction, and to prevent unnecessary, inconvenient, and expensive litigation.

B. The Trial Court Erred in Applying Missouri Law as Missouri’s Choice of Law Analysis Dictates that Georgia Law Applies.

It is well established that, absent agreement by the parties to the contrary, the wrongful death statute of the state in which the fatal injury occurred applies. *Snead by Snead v. Cordes by Golding*, 811 S.W.2d 391, 394 (Mo.App. W.D. 1991) citing *State ex rel. Kansas City Stock Yards Co. of Maine v. Clark*, 536 S.W.2d 142, 145-146 (Mo. 1976). It is undisputed that decedent sustained his fatal injuries in the state of Georgia, therefore the wrongful death statute of the state of Georgia, not Missouri, is applicable.

This Court has restated that principal on numerous occasions. In *Thompson by Thompson v. Crawford*, 833 S.W.2d 868, 870 (Mo. banc 1992), Trevor Thompson, a minor, filed a petition in the Circuit Court of Dunklin County, Missouri, for the wrongful death of his mother. Trevor’s mother, a resident of Tennessee, died as a result of injuries

she received in an automobile accident that occurred in Tennessee. *See Id.* Decedent was a passenger in a car driven by a resident of Tennessee. *Id.* The vehicle was owned in part by a resident of Missouri, was registered and "titled" in Missouri and had Missouri license plates. *Id.* The vehicle was also insured under a policy of liability insurance issued and purchased in Missouri. *Id.* This Court found that because the negligent conduct of the driver that caused the accident, as well as the resulting injury, occurred in Tennessee and the decedent, the negligent driver and the minor plaintiff were residents of Tennessee at the time of the accident, the substantive law of Tennessee governed the plaintiff's cause of action. *See Id.*

In *Thompson* this Court cited *Bigham v. McCall Service Stations, Inc.*, 637 S.W.2d 227, 229 (Mo.App.1982) and *Nelson v. Hall*, 684 S.W.2d 350, 354 (Mo.App. modified October 30, 1984) when it stated that Missouri cases have consistently held that the substantive law of the state in which the fatal injury occurred should apply to the cause of action for wrongful death. *Id.* This Court held that plaintiff's claims in the *Thompson* case had the most significant relationship with Tennessee and, as such, should be governed by Tennessee law and that Tennessee's wrongful death statute, not Missouri's, would apply. Similar to the *Thompson* matter, the incidents giving rise to the underlying lawsuit in the present case took place in Georgia, the decedent was a resident of Georgia at the time of his death and plaintiff Terri Saddoris is, and continues to be, a resident of Georgia. A14-A15.

Application of the law of the state where the incident giving rise to the lawsuit occurred is a long standing principal of this Court. *See Martinez v. Missouri Pac. R. Co.*,

327 S.W.2d 855, 858 (Mo. banc 1959). In *Martinez*, plaintiff filed an action for damages in Missouri for the wrongful death of Edward P. Martinez under the last clear chance doctrine of the State of Louisiana. *Id.* Martinez was killed by defendant's train in the joint yards of the Missouri Pacific and Texas & Pacific Railroads in Alexandria, Louisiana. *Id.* This Court affirmed that the substantive law of the State of Louisiana applied as the evidence tended to show that the casualty occurred in Louisiana. *Id.*

Based upon the above, there is a clear presumption that Missouri Courts will apply the law of the state where a fatal injury is sustained. Missouri courts have held that any request to apply the law of another state, that is not agreed between the parties, is to be determined on the basis of *exceptional circumstances* which show that a state, other than that where the fatal injury occurred, enjoys the most significant contacts and relationship with the occurrence and the parties. *Snead by Snead, supra*. 811 S.W.2d at 394 (emphasis added). There are no exceptional circumstances warranting application of the Missouri wrongful death statute in this case.

In the event this Court does proceed to further choice of law analysis, Missouri has adopted the “most significant relationship” test. *See Galvin v. McGilley Memorial Chapels*, 746 S.W. 2d 588, 590 (Mo.App. W.D. 1987). The “most significant relationship” test is defined in the Restatement (Second) of Conflict of Laws §145 and has been adopted by Missouri for both tort and contract claims. *Id.* Under this test, the state having the “most significant relationship” will depend upon the nature of the cause of action and upon the particular legal issues in dispute. *See Dorman v. Emerson Elec.*

Co., 23 F.3d 1354, 1358 (8th Cir. 1994). It is clear that Georgia enjoys the most significant contacts and relationship with the occurrence and the parties in this matter.

Section 145 provides that “the rights and liabilities of the parties with respect to an issue in tort are determined by the local law of the state which, as to that issue, has the most significant relationship to the occurrence and the parties.” *Id.* Contacts to be considered in determining which state’s law to apply are (a) the place where the injury occurred; (b) the place where the conduct causing the injury occurred; (c) the domicile, residence, nationality, place of incorporation and place of business of the parties; and (d) the place where the relationship, if any, between the parties is centered. *Id.*; *see also Kennedy v. Dixon*, 439 S.W.2d 173, 181 (Mo. banc 1969). “Missouri cases have consistently held that the substantive law of the state in which the fatal injury occurred should apply to the cause of action for wrongful death.” *Thompson, supra*. 833 S.W.2d at 870.

Georgia law unquestionably governs this action. Georgia law is applicable because the decedent’s fatal injury occurred in Georgia. *Thompson*, 833 S.W.2d at 870; *see also Nelson, supra*, 684 S.W.2d at 354. In addition, Georgia is the place of residence of plaintiff Terri Saddoris, Georgia was the decedent’s place of residence, and Georgia is the place where the conduct alleged to have caused the decedent’s injuries occurred. A14-A15. To the extent there could be deemed a “relationship” between the parties, the relationship is centered in Georgia, where the decedent used the hoist that is the subject of this litigation at his place of employment. A15. Georgia clearly bears the “most significant relationship” to this matter.

Respondent has placed much weight on its application of Missouri's wrongful death statute on its claim that defendant is a Missouri corporation, which is erroneously stated in every pleading but the Petition. Actually, defendant is a Delaware corporation with a Missouri principal place of business. Nonetheless, this Court has refused to recognize the significance of this contact in tort actions. *State ex rel. Broglin v. Nangle*, 510 S.W.2d 699, 702 (Mo. banc 1974). This Court has held that a corporation is an artificial person at law, and its residence or citizenship is therefore fictional. *Id. citing Forest City Mfg. Co. v. International L.G.W. Union* (233 Mo.App. 935), 111 S.W.2d 934, 940 (Mo.App. 1938). The trend of modern decisions is to look not at the fiction but at the realities disclosed by the facts. *Id.*; *see also* Restatement (Second) of Conflict of Laws § 145, Comment e. The reality is that Georgia is the place where the conduct alleged to have caused the decedent's injury occurred, the decedent's fatal injury occurred in Georgia, it was the decedent's place of residence and it is the place of residence of plaintiff Terri Saddoris. A14-A15. Application of Georgia law will simply result in the proper party, Terri Saddoris, being allowed to bring the cause of action on behalf of her deceased husband. Plaintiffs have provided no compelling reason to apply Missouri law.

Additionally, plaintiffs conceded in their memorandum in opposition to Hubbell's motion to dismiss that Georgia law applies stating, "Missouri will honor, under Georgia law, the elements of the cause of action for wrongful death." A43. If the respondent applies Georgia law to establish the elements of the wrongful death action, then he must

also apply Georgia law to determine the proper parties to the action. There is no question that Georgia law should apply, as conceded by plaintiffs in said memorandum.

II. RELATOR IS ENTITLED TO AN ORDER PROHIBITING RESPONDENT FROM ENFORCING HIS JULY 28, 2005 ORDER DENYING RELATOR'S MOTION TO DISMISS AND FURTHER PROHIBITING RESPONDENT FROM TAKING ANY FURTHER ACTION IN THE UNDERLYING CASE WITH RESPECT TO THE WRONGFUL DEATH CLAIMS OF DAVID W. SADDORIS, SR. AND FLOW EVA SADDORIS, EXCEPT TO DISMISS THOSE CLAIMS FOR LACK OF STANDING, BECAUSE AS A MATTER OF LAW RESPONDENT HAS NO JURISDICTION OVER THE CLAIMS OF THESE PLAINTIFFS, IN THAT GA. CODE ANN. § 51-4-2 GIVES DECEDENT'S WIFE, TERRI SADDORIS, THE EXCLUSIVE RIGHT TO PURSUE A WRONGFUL DEATH CLAIM.

Once this Court has established that Georgia's Wrongful Death Statute applies in the underlying litigation, it must determine that Terri Saddoris has the exclusive right to recovery pursuant to the clear and unambiguous terms of that statute. Therefore, plaintiffs David W. Saddoris, Sr. and Flow Eva Saddoris have no standing and respondent lacks jurisdiction over these plaintiffs.

A. Standard of Review

Standing is a threshold requirement and without it, the trial court has no power to grant the relief requested. *Inman v. Missouri Dept. of Corrections*, 139 S.W.3d 180, 184 (Mo.App. W.D. 2004). Lack of standing cannot be waived. *Id.* Appellate review of

whether a litigant has standing is *de novo*. *Id.* In this case, standing is established by statute, specifically Ga. Code Ann. § 51-4-2. Because this case also involves statutory interpretation, which is a question of law, this Court's review is *de novo* on that issue as well. *Conseco Finance Servicing Corp. v. Missouri Dept. of Revenue*, 98 S.W.3d 540, 542 (Mo. banc 2003).

B. The Respondent Erred in Denying Relator's Motion to Dismiss Plaintiffs David W. Saddoris, Sr. and Flow Eva Saddoris as the Decedent's Wife, Terri Saddoris, has the Exclusive Right to Bring a Wrongful Death Claim

In Georgia, wrongful death claims are governed by Georgia Code Ann. § 51-4-2, which provides that “the surviving spouse or if there is no surviving spouse, a child or children, . . . may recover for the homicide of the spouse or parent the full value of the life of the decedent as shown by the evidence.” The Georgia Supreme Court has noted that “under section [51-4-2](a), wrongful death claims may be pursued by only two categories of plaintiffs—the decedent’s spouse and, if there is no surviving spouse, the decedent’s children. No other relatives of the decedent are allowed to bring an action for wrongful death under section 51-4-2.” *Tolbert v. Maner*, 271 Ga. 207, 518 S.E.2d 423, 425 (1999). Relator’s motion to dismiss was based upon the plain language of Georgia’s wrongful death statute, which gives decedent’s wife, Terri Saddoris, the exclusive right to pursue a wrongful death claim for the death of David Saddoris, Jr. Decedent’s parents, David W. Saddoris, Sr. and Flow Eva Saddoris, have no standing to sue, and are not proper parties to this suit.

Respondent should have granted Hubbell's motion to dismiss David W. Saddoris, Sr. and Flow Eva Saddoris. The respondent's erroneous ruling places Hubbell in the position of having to defend against the claims of two plaintiffs who have no right to sue, will impact Hubbell's analysis and defense of the case going forward and flies in the face of justice. The respondent's order should not stand.

C. The Respondent Exceeded his Jurisdiction By Denying The Relator's Motion To Dismiss For Lack Of Standing.

Where a question is raised about a party's standing, "courts have a duty to determine the question of their jurisdiction before reaching substantive issues." *Farmer v. Kinder*, 89 S.W.3d 447, 451 (Mo. banc 2002). If the threshold standing requirement is not met, the trial court must dismiss the plaintiffs for lack of jurisdiction, because if a party lacks standing the court does not have jurisdiction of the substantive issues presented." *Id.* at 451 (Mo. 2002). Lack of standing cannot be waived. *Id.*; *see also Sauter v. Schnuck Mkts., Inc.*, 803 S.W.2d 54, 55 (Mo.App. 1990).

If a statute sets forth requirements necessary to confer standing, and those requirements are not strictly met, then the party suing is prohibited from pursuing their claim. *Nelms v. Bright*, 299 S.W.2d 483, 487 (Mo. banc 1957). In this case, Georgia Code Ann. § 51-4-2 sets forth the requirements necessary to confer standing. Plaintiffs David W. Saddoris, Sr., and Flow Eva Saddoris do not meet those statutory standing requirements. The Circuit Court therefore does not have jurisdiction over their claims.

A Writ of Prohibition is proper if the trial court has inappropriately ruled on the issue of standing. In *State ex rel. Springfield Underground, Inc. v. Sweeney*, 102 S.W.3d

7, 8-9 (Mo. banc 2003), this Court conducted a proceeding in prohibition, arising from the denial of Springfield Underground's Motion to Dismiss and Motion for Summary Judgment. *Id.* In that action, the plaintiff maintained that the trial court lacked subject matter jurisdiction to proceed on a mechanic's lien issue, governed by statute, as plaintiff sought to enforce the lien against the wrong tract of land. *Id.* The Court of Appeals, Southern District, summarily denied Springfield Underground's petition for a writ of prohibition, and, thereafter, this Court issued a preliminary writ, ultimately making it absolute. *Id.* Thus, it is clear a writ of prohibition is appropriate in cases similar to the one at issue here, as standing is a threshold issue that must be determined at this point in the litigation.

CONCLUSION

Respondent erred in failing to apply Georgia's wrongful death statute when ruling on relator's Motion to Dismiss filed in the underlying litigation. Plaintiffs David W. Saddoris, Sr., and Flow Eva Saddoris lack standing to bring their wrongful death claims against relator Hubbell. This Court should issue a writ of prohibition to preserve constitutional standing principles, to forestall further action by the circuit court that exceeds its jurisdiction, and to prevent unnecessary, inconvenient, and expensive litigation.

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CERTIFICATE OF SERVICE

A copy of this Brief of appellant, a disk containing this brief, and a copy of the Appellant's Appendix were mailed on December 28, 2005, to the following:

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Brief of Relator includes the information required by Rule 55.03, and complies with the requirements contained in Rule 84.06. Relying on the word count of the Microsoft Word program, the undersigned certifies that the total number of words contained in this brief is 4,273, exclusive of the cover, signature block, and certificates of service and compliance.

The undersigned further certifies that the disks filed with the Brief of Relator and served on the other parties were scanned for viruses and found virus-free through the Norton anti-virus program.
